

1 TOMIO B. NARITA (SBN 156576)  
2 ROBIN M. BOWEN (SBN 230309)  
3 SIMMONDS & NARITA LLP  
4 44 Montgomery Street, Suite 3010  
5 San Francisco, CA 94104-4816  
Telephone: (415) 283-1000  
Facsimile: (415) 352-2625  
[tnarita@snllp.com](mailto:tnarita@snllp.com)  
[rbowen@snllp.com](mailto:rbowen@snllp.com)

6 Attorneys for defendant  
Butler, Robbins & White

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1           Defendant FINANCIAL CREDIT CLEARING HOUSE-1956 INC. dba  
2 Butler, Robbins & White (“Defendant”) hereby submits the following Answer to  
3 the Complaint filed in this action by plaintiff SANDRA MA (“Plaintiff”):

4           1.     In answering Paragraph 1 of the Complaint, Defendant admits, on  
5 information and belief, that Plaintiff is a resident of Alameda County, California.  
6 Defendant lacks sufficient knowledge to form a belief as to the remaining  
7 allegations of Paragraph 1 of the Complaint and on that basis denies them.

8           2.     Denied.

9           3.     Defendant avers that no response to Paragraph 3 of the Complaint is  
10 required of it.

11           4.     In answering Paragraph 4 of the Complaint, Defendant admits, n  
12 information and belief, that Plaintiff is a natural person who resides in Hayward,  
13 California, Alameda County. Defendant admits, on information and belief, that  
14 Defendant qualifies as a “consumer” as defined by the Fair Debt Collection  
15 Practices Act (the “FDCPA”), 15 U.S.C. § 1692a(3) and as a “debtor” as defined  
16 by the Rosenthal Fair Debt Collection Practices Act (the “Rosenthal Act”), Cal.  
17 Civ. Code § 1788.2(h). Except as herein admitted, the remaining allegations of  
18 Paragraph 4 are denied.

19           5.     In answering Paragraph 5 of the Complaint, Defendant admits that it  
20 is a Florida corporation that conducts interstate business with residents of the State  
21 of California and that it has, at times, acted as a “debt collector” as defined by the  
22 FDCPA, 15 U.S.C. § 1692a(6) and the Rosenthal Act, Cal. Civ. Code § 1788.2(c).  
23 Except as herein admitted, the remaining allegations of Paragraph 5 are denied.

24           6.     Defendant lacks sufficient knowledge to form a belief as to the  
25 allegations of Paragraph 6 of the Complaint and on that basis, denies them.

26           7.     In answering Paragraph 7 of the Complaint, Defendant admits that  
27 Plaintiff received medical care aboard a Princess Cruise Lines, Ltd. (“Princess”)

1 ship in August 2006. Defendant admits that after Plaintiff failed to pay the  
2 amount incurred, Defendant attempted to collect the financial obligation owed by  
3 Plaintiff that was incurred to Princess. Defendant admits that this financial  
4 obligation of Plaintiff qualifies as a “debt” as defined by the FDCPA, 15 U.S.C. §  
5 1692a(5) and by the Rosenthal Act, Cal. Civ. Code § 1788.2(d). Except as herein  
6 admitted, the remaining allegations of Paragraph 7 are denied.

7       8.     Admitted.

8       9.     In answering Paragraph 9 of the Complaint, Defendant admits that it  
9 sent Plaintiff a letter dated June 29, 2007, the contents of which are self-  
10 explanatory. Except as herein admitted, the remaining allegations of Paragraph 9  
11 are denied.

12      10.    Denied.

13      11.    Denied.

14      12.    In answering Paragraph 12 of the Complaint, Defendant admits that  
15 Plaintiff’s mother told Defendant that she believed Medicaid should pay Plaintiff’s  
16 financial obligation at issue. Defendant also admits that Plaintiff told Defendant  
17 that she intended to submit a claim to Medicaid for the balance of her financial  
18 obligation at issue. Except as herein admitted, the remaining allegations of  
19 Paragraph 12 are denied.

20       13.    Defendant incorporates by reference paragraphs 1 through 13 above  
21 as if fully stated herein.

22      14.    Denied.

23      15.    Denied.

24      16.    Denied.

25       17.    Defendant incorporates by reference paragraphs 1 through 16 above  
26 as if fully stated herein.

27      18.    Denied.

1 19. Denied.

2 20. Denied.

3 21. Denied.

4 22. Defendant incorporates by reference paragraphs 1 through 21 above  
5 as if fully stated herein.

6 23. Denied.

7 24. Denied.

8 25. Defendant incorporates by reference paragraphs 1 through 24 above  
9 as if fully stated herein.

10 26. Denied.

11 27. Denied.

12 28. Denied.

13 29. Denied.

14

15 **AFFIRMATIVE DEFENSES**

16 As and for separate affirmative defenses to the Complaint,  
17 Defendants allege as follows:

18

19 **FIRST AFFIRMATIVE DEFENSE**

20 **(Failure to State a Claim)**

21 The allegations of the Complaint fail to state a claim against Defendant  
22 upon which relief can be granted.

23

24 **SECOND AFFIRMATIVE DEFENSE**

25 **(Statute of Limitations/Laches)**

26 The purported claims set forth in the Complaint are barred in whole or in  
27 part by the applicable statutes of limitation and/or the equitable doctrine of laches.

28

## THIRD AFFIRMATIVE DEFENSE (Bona Fide Error)

To the extent that any violation of law occurred, which Defendant expressly denies, said violation was not intentional and resulted from a bona fide error notwithstanding the maintenance by Defendant of procedures reasonably adapted to avoid any such error.

# **FOURTH AFFIRMATIVE DEFENSE**

## **(Unclean Hands)**

The allegations in the Complaint and relief requested are on information and belief barred in whole or in part by the doctrine of unclean hands.

## **FIFTH AFFIRMATIVE DEFENSE (No Wilful Conduct)**

Defendant acted in good faith at all times in its dealings with Plaintiff, and if any conduct by Defendant is found to be unlawful, which Defendant expressly denies, such conduct was not willful and should not give rise to liability.

## SIXTH AFFIRMATIVE DEFENSE (Failure to Mitigate)

Plaintiff, although under a legal obligation to do so, has failed to take reasonable steps to mitigate any alleged damages that she may have and is therefore barred from recovering damages, if any, from Defendant.

# SEVENTH AFFIRMATIVE DEFENSE

## (Waiver)

Plaintiff has waived her rights, if any, to recover the relief she seeks in the Complaint based upon her own conduct and admissions with respect to the debt.

# **EIGHTH AFFIRMATIVE DEFENSE**

## **(Good Faith)**

Defendant has, at all material times with respect to Plaintiff, acted in good faith in an effort to comply fully with all relevant federal and state laws.

## NINTH AFFIRMATIVE DEFENSE (Apportionment)

Without admitting that any damages exist, if damages were suffered by Plaintiff as alleged in the Complaint, those damages were proximately caused by and contributed by persons other than Defendant. The liability, if any exists, of all Defendants and/or any responsible parties, named or unnamed, should be apportioned according to their relative degrees of fault, and the liability of this Defendants should be reduced accordingly.

## **TENTH AFFIRMATIVE DEFENSE**

### **(Supervening Cause)**

The causes of action in the Complaint are barred, in whole or in part, to the extent that any injury or loss sustained was caused by intervening or supervening events over which Defendant had or has no control.

# **ELEVENTH AFFIRMATIVE DEFENSE**

## **(Equitable Indemnity)**

To the extent that Plaintiff has suffered any damage as a result of any alleged act or omission of Defendant, which Defendant denies, Defendant is entitled to equitable indemnity according to comparative fault from other persons and/or entities causing or contributing to such damages, if any.

# **TWELFTH AFFIRMATIVE DEFENSE**

## **(Setoff)**

To the extent that Plaintiff has suffered any damage as a result of any alleged act or omission of Defendant, which Defendant denies, Defendant is, on information and belief, entitled to a setoff in the amount Plaintiff owes on her unpaid account.

# THIRTEENTH AFFIRMATIVE DEFENSE

## (First Amendment)

Defendant's conduct is protected under the First Amendment of the United States Constitution and the California Constitution. Plaintiff's proposed interpretation of provisions of the FDCPA and state law must be rejected as they would place an unreasonable restraint upon Defendant's First Amendment rights, thereby raising serious constitutional issues.

WHEREFORE, Defendants request judgment as follows:

1. That Plaintiff takes nothing by the Complaint, which should be dismissed with prejudice.
2. That Defendants recover from Plaintiff costs according to proof.
3. That Defendants recover attorney's fees according to proof.

